



March 20, 2009

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## ENGROSSED HOUSE BILL No. 1487

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DIGEST OF HB 1487 (Updated March 17, 2009 1:09 pm - DI 106)

**Citations Affected:** IC 32-23.

**Synopsis:** The rights of owners in coal lands. Establishes court procedures to establish terms under which a person with a partial ownership or leasehold interest may secure a lease on the uncontrolled remaining coal interest in order to mine the coal.

**Effective:** July 1, 2009.

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### Battles, Koch

(SENATE SPONSORS — STEELE, HUME)

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January 14, 2009, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

February 2, 2009, amended, reported — Do Pass.

February 5, 2009, read second time, ordered engrossed. Engrossed.

February 12, 2009, read third time, passed. Yeas 67, nays 25.

#### SENATE ACTION

February 19, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

March 19, 2009, amended, reported favorably — Do Pass.

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EH 1487—LS 7396/DI 77+



March 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1487

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-23-12 IS ADDED TO THE INDIANA CODE  
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]:

4 **Chapter 12. Coal: Estates in Land**

5 **Sec. 1. This chapter does not do the following:**

6 (1) Provide an exclusive basis by which a joint owner in coal  
7 or a lessee of the coal owner may enjoy their estate in the coal  
8 land.

9 (2) Diminish the rights of a joint owner of coal or a lessee of  
10 the coal owner under common law.

11 (3) Diminish the appurtenant rights of a coal owner.

12 (4) Prohibit a joint owner from filing a petition for partition  
13 under IC 32-17-4, provided that the petition for partition is  
14 filed in accordance with and subject to IC 32-23-12-9(d).

15 (5) Prohibit any entity with eminent domain powers from  
16 acquiring all or a portion of the coal land by exercise of  
17 eminent domain powers.

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1        **Sec. 2.** As used in this chapter, "coal land" means the coal estate  
 2 in land that contains coal and is subject to a vested interest by a  
 3 plaintiff, under this chapter, to the coal lying within the land.

4        **Sec. 3.** As used in this chapter, "coal owner" means a person  
 5 vested with an undivided fractional fee simple interest or other  
 6 freehold interest in coal contained within the coal land. However,  
 7 the term does not include a person with only a leasehold, easement,  
 8 or right-of-way interest in the coal land.

9        **Sec. 4.** As used in this chapter, "joint owner" means a person  
 10 who is a joint tenant, a tenant in common, a tenant by the entirety,  
 11 or other person who is a coal owner of less than one hundred  
 12 percent (100%) of an undivided interest in all the coal within the  
 13 coal land that is sought to be developed.

14        **Sec. 5.** A proceeding under this chapter must be brought in the  
 15 circuit or superior court of the county:

16            (1) where the coal land sought to be affected is entirely  
 17 located; or

18            (2) if the coal land is located in more than one (1) county, the  
 19 county where the major part of the coal land is located.

20        **Sec. 6.** (a) If the title to coal lying within the land is owned by  
 21 joint owners, a coal owner or coal lessee of the coal owner that  
 22 meets the requirements under this chapter is authorized to mine  
 23 and remove coal from the land subject to this chapter.

24            (b) The circuit or superior court of the county in which the coal  
 25 land or the major part of the coal land lies may:

26            (1) declare a trust in the coal land;

27            (2) appoint without a bond a trustee for all persons owning an  
 28 interest in the coal land who are not plaintiffs or the lessor of  
 29 the plaintiffs under a valid and subsisting coal lease; and

30            (3) authorize the trustee to sell, execute, and deliver a valid  
 31 lease on the coal land on behalf of each defendant on terms  
 32 and conditions approved by the circuit court as provided in  
 33 this chapter.

34            (c) A lease created under this chapter continues after the  
 35 termination of the trust, unless the lease has expired by its own  
 36 terms.

37        **Sec. 7.** Proceedings for the appointment of a trustee may be  
 38 instituted by any person who is:

39            (1) a coal owner of the coal sought to be developed; or

40            (2) vested with a valid and subsisting coal lease, if the lessor  
 41 is a person described in subdivision (1).

42        **Sec. 8.** (a) The person seeking to create a trust for an interest in

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coal land for the purpose of leasing and developing the coal interest shall join as a defendant each person who has a legal interest in the coal land, except for any plaintiffs or persons having a legal interest in the coal land who at the time of the action are parties to a valid and existing lease granting to the plaintiff the mining rights sought by the plaintiff. A person who might have a contingent or future interest in the coal land is bound by the judgment entered in the proceedings.

(b) The plaintiff shall file a verified petition that specifically sets forth the following:

(1) The request of each plaintiff that a trustee be appointed to execute a lease granting the plaintiff the right to mine and remove coal from the subject coal land.

(2) The legal description of the coal land.

(3) The interest of the plaintiff in the coal within the coal land.

(4) The apparent interest of each defendant in the coal within the coal land.

(5) A statement that the plaintiff is willing to purchase a mineral lease covering the interest of each defendant and that the existence of these unleased mineral interests is detrimental to and impairs the enjoyment of the interest of the plaintiff.

(c) The Indiana rules of trial procedure govern an action under this chapter to make an unknown party a defendant.

(d) The court shall appoint a guardian ad litem for any defendant to the proceeding who is a ward of the state or a ward to another person.

(e) If it appears to the court that a person who is not in being, but upon coming into being, is or may be entitled to any interest in the property sought to be leased, the court shall appoint a guardian ad litem to appear for and represent the interest in the proceeding and to defend the proceeding on behalf of the person not in being. A judgment or order entered by the circuit court in the proceeding is effective against the person not in being.

(f) The court shall receive evidence and hear testimony concerning:

(1) the matters in the plaintiff's petition; and

(2) the prevailing terms of similar coal leases obtained in the vicinity of the coal land in the petition, including the length of the lease term, bonus money, delay rentals, royalty rates, and other forms of lease payments.

If, upon taking evidence and hearing testimony, the court determines that the material allegations of the petition are true and

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that there has been compliance with the required notice provisions, the court shall enter an order determining the interest of each defendant in the coal land sought to be leased. The court shall also appoint a trustee for the purpose of executing in favor of the plaintiff a coal lease covering the interest of each defendant. The court's judgment appointing the trustee and authorizing the execution of the lease must specify the minimum terms that may be accepted by the trustee. Those terms must be substantially consistent with the terms of other similar coal leases obtained in the vicinity as determined by the court. The terms of the coal lease also must be substantially consistent with the terms of other existing leases, if any, covering the remaining coal interests in the land described in the petition.

(g) The coal land to be covered by a coal lease must be contiguous. To the extent that any of the coal land described in the petition is not contiguous to other coal land in the petition, that coal land must be subject to separate coal leases.

(h) The court shall determine a reasonable fee to be paid to the trustee and the trustee's reasonable attorney's fees and costs of the proceeding, which shall be paid by the plaintiff.

(i) Each plaintiff shall promptly furnish to the court a report of proceedings of the evidence received and testimony taken at the hearing on the petition. The report of proceedings shall be filed and made a part of the case record.

(j) In proceedings under this chapter, the circuit or superior court may:

- (1) investigate and determine questions of conflicting or controverted titles;
- (2) remove invalid and inapplicable encumbrances from the title to the coal land; and
- (3) establish and confirm the title to the coal or the right to mine and remove coal from any of the coal land.

**Sec. 9. (a) The trustee shall:**

- (1) enter into negotiations with the plaintiff;
- (2) execute a coal lease in favor of the plaintiff covering the interest of the defendant that reflects the findings and judgment of the circuit or superior court; and
- (3) promptly prepare and file a report of the coal lease stating the terms of the lease and the payments received for the lease and give notice to all parties appearing of record.

(b) The circuit or superior court shall review the coal lease under subsection (a) to determine if the sale is in accordance with

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the court's findings and judgment. If the circuit or superior court approves the sale of the coal lease, the court shall:

- (1) issue an order confirming the sale; and
- (2) issue an order terminating the trust.

(c) If, before an order confirming the lease pursuant to subsection (b) is issued, a party to the proceedings files, in accordance with subsection (d), a petition for partition under IC 32-17-4 applicable to the coal land, whether solely for the coal estate or for estates in the subject land in addition to and including the coal estate, the proceedings under this chapter shall be stayed during the pendency of the proceeding initiated under IC 32-17-4, and upon any final order of partition or sale in that proceeding, the proceedings under this chapter shall be terminated.

(d) Any petition for partition under IC 32-17-4 applicable to the coal land filed during the pendency of any petition filed under this chapter shall be filed in the same court exercising jurisdiction over the petition filed under this chapter. If any defendant in a proceeding under this chapter files during the pendency of any proceeding under this chapter a petition for partition under IC 32-17-4 applicable to the coal land, and the petition for partition is subsequently dismissed or terminated prior to a final order of partition or sale, the same defendant may not refile a subsequent petition for partition applicable to the coal land under IC 32-17-4 until the proceedings under this chapter are concluded.

(e) If a petition for partition is filed under IC 32-17-4 after an order confirming a lease pursuant to subsection (b) has been issued, any land partitioned or sold shall be partitioned or sold subject to the lease.

**Sec. 10.** Any payment that is owed to a defendant under a coal lease executed by the trustee must be paid by the plaintiff directly to the defendant.

**Sec. 11.** The sale of and execution of any coal lease under this chapter is binding concerning the interest in the coal and the right to mine and remove the coal owned by any defendant to the action in the same manner as if the defendant had personally signed and delivered the lease. The coal lease is binding on the heirs, legatees, personal representatives, successors, and assigns of the defendant.

**Sec. 12. (a)** If a trustee:

- (1) dies or resigns; or
- (2) refuses or is unable to act;

the circuit or superior court shall, upon either the court's motion or the motion of a plaintiff, appoint a successor trustee.

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1       (b) After the entry of the initial judgment authorizing a lease, all  
2 subsequent proceedings pertaining to the coal land and the coal  
3 interest involved in the initial litigation, including subsequent  
4 leasing proceedings or proceedings by the trustee requesting  
5 authority to execute and deliver additional documents pertaining  
6 to a coal lease, must be commenced in the same court as the  
7 proceedings for the initial lease. The acting trustee at the time of  
8 any subsequent proceedings shall act as the trustee in the  
9 subsequent proceedings. The circuit or superior court retains  
10 continuing jurisdiction over any subsequent proceedings.

11       Sec. 13. The court costs related to the proceedings allowed  
12 under this chapter must be paid by the plaintiff.

13       Sec. 14. This chapter shall be liberally construed so that any  
14 lease issued under this chapter conveys marketable title.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy, Technology, and Utilities, to which was referred House Bill 1487, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 5, delete "one-hundredth" and insert "**one hundred**".

Page 2, line 6, delete "(0.01%)" and insert "**(100%)**".

Page 2, line 22, delete "plaintiffs;" and insert "**plaintiffs or the lessor of the plaintiffs under a valid and subsisting coal lease;**".

and when so amended that said bill do pass.

(Reference is to HB 1487 as introduced.)

MOSES, Chair

Committee Vote: yeas 7, nays 1.

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1487, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 11 and 12, begin a new line block indented and insert:

**"(4) Prohibit a joint owner from filing a petition for partition under IC 32-17-4, provided that the petition for partition is filed in accordance with and subject to IC 32-23-12-9(d).**

**(5) Prohibit any entity with eminent domain powers from acquiring all or a portion of the coal land by exercise of eminent domain powers."**

Page 4, between lines 40 and 41, begin a new paragraph and insert:

**"(c) If, before an order confirming the lease pursuant to subsection (b) is issued, a party to the proceedings files, in accordance with subsection (d), a petition for partition under IC 32-17-4 applicable to the coal land, whether solely for the coal estate or for estates in the subject land in addition to and including the coal estate, the proceedings under this chapter shall be stayed during the pendency of the proceeding initiated under IC 32-17-4,**

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and upon any final order of partition or sale in that proceeding, the proceedings under this chapter shall be terminated.

(d) Any petition for partition under IC 32-17-4 applicable to the coal land filed during the pendency of any petition filed under this chapter shall be filed in the same court exercising jurisdiction over the petition filed under this chapter. If any defendant in a proceeding under this chapter files during the pendency of any proceeding under this chapter a petition for partition under IC 32-17-4 applicable to the coal land, and the petition for partition is subsequently dismissed or terminated prior to a final order of partition or sale, the same defendant may not refile a subsequent petition for partition applicable to the coal land under IC 32-17-4 until the proceedings under this chapter are concluded.

(e) If a petition for partition is filed under IC 32-17-4 after an order confirming a lease pursuant to subsection (b) has been issued, any land partitioned or sold shall be partitioned or sold subject to the lease."

and when so amended that said bill do pass.

(Reference is to HB 1487 as printed February 3, 2009.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 1.

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